Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Numbering Resource Optimization	)	
	)	
South Bay Cities Council of Governments, *et al.* Petition for Emergency Relief of the California Public Utilities Commission's Decision to Implement an All Services Area Code Overlay in the 310 Area Code	)	CC Docket No. 99-200
	)	DA 05-3158

COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits its comments opposing the Petition for Emergency Relief ("Petition") filed by the South Bay Cities Council of Governments, The Telephone Connection of Los Angeles, Inc. and The Telephone Connection Local Services LLC (collectively, "Petitioners"). Petitioners request that the Wireline Competition Bureau ("WCB" or the "Bureau") immediately issue an order directing the California Public Utilities Commission ("CPUC") to stay the implementation of the all-services overlay slated for the 310 area code.[1] In addition, Petitioners seek a declaratory

[1] On August 29, 2005, the CPUC issued its D. 05-08-040, *Opinion Granting Petition to Modify Decision 00-09-073*, ordering the implementation of an all-services overlay in the 310 area code (the Overlay Decision). Some of the Petitioners subsequently filed for rehearing of D.05-08-040 making arguments regarding 1 + 10 digit dialing essentially identical to those made in the Petition. The CPUC denied rehearing in a decision mailed November 21, 2005, D.05-11-33, *Order Denying Rehearing of D.05-08-040* (the Rehearing Decision). Petitioners have made similar arguments in pleadings related to a separate Petition for Modification which were addressed by a CPUC decision, D.05-12-047, mailed December 16, 2005, *Opinion on*

ruling that the overlay plan adopted by the CPUC is not in compliance with this Commission's rules and decisions concerning 10 digit dialing.

Verizon Wireless opposes the Petition because a stay of the critically needed relief plan for the 310 area code would cause substantial harm to consumers and carriers alike. Moreover, the CPUC's implementation of dialing patterns for the 310 area code is consistent with Section 52.19(c)(ii) of the FCC's rules, because all consumers must dial a minimum of ten digits whether dialing within the 310 NPA or between the 310 NPA and the new 424 NPA. In addition, Petitioners have not demonstrated that they will experience irreparable harm absent a stay. Petitioners' assertions that a stay would not substantially harm other interested parties and that a stay would serve the public interest are belied by the facts. As a carrier operating in California, particularly in the 310 area code, Verizon Wireless strongly objects to Petitioners' claim that the much needed area code relief should now suddenly be derailed on the basis that more delays would not cause substantial harm.

I. A STAY IS NOT JUSTIFIED

Petition for Modification, in which the CPUC again rejected Petitioners' arguments regarding 1 + 10 digit dialing. Finally, Petitioners attempted to receive emergency relief from the CPUC in the form of a suspension of the obligation to send notices to consumers by motion dated November 21, 2005 which was denied by the CPUC Administrative Law Judge by ruling dated November 29, 2005, *Administrative Law Judge's Ruling Denying Motion to Suspend Distribution and to Revise Public Notice,* (11/29/05 ALJ Ruling).

A stay is designed to maintain the status quo. As cited by the Petitioners, the U.S. Court of Appeals for the D.C. Circuit has announced a four-factor test to determine under what circumstances the status quo should be maintained during pending litigation. Petitioners correctly state the legal standard for obtaining a stay, but misapply it to the facts on the ground in California.[2] Petitioners correctly note that the Commission must examine "whether: (1) petitioners are likely to succeed on the merits; (2) petitioners will suffer irreparable injury absent a stay; (3) a stay would substantially harm other interested parties; (4) a stay would serve the public interest."[3]

The status quo which Petitioners seek to maintain in the 310 NPA, however, is in direct conflict with one of the FCC's central tenets of number administration, that numbering administration should "seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis."[4] The 310 NPA has several rate centers already at or near exhaust and is running out of numbers. As of December 22, 2005, the pooling administrator ("PA") has only one full NXX code and 157 individual blocks available to supply the pool with thousands-blocks. The remaining full code can only be used in one rate center. The 157

---

[2] *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F. 2d 921, 925 (D.C. Cir. 1958), as modified in *Washington Metropolitan Area Transit Comm'n v, Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977).

[3] *Virginia Petroleum Jobbers,* 259 F. 2d at 925.

[4] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd. 19392, 19516, ¶ 281 (1996) ("*Local Competition Order*").

individual blocks can only be used in the rate center to which they have already been assigned. The situation in the 310 NPA is serious given that eight out of sixteen rate centers in the 310 NPA have 3 or fewer thousands-blocks available with no means to replenish them absent donations.[5]

The overlay implementation will not yield new numbering resources until August 26, 2006 when new blocks will be available to the industry in the new 424 NPA. Until then, it is questionable if current numbering resources will be sufficient to meet the needs of existing carriers and the unavailability of numbering resources will restrict the possibility for a new entrant to establish a footprint in this market. Simply stated, the status quo should not be maintained any longer if competition and consumer choice are to be preserved.

A. Petitioners Cannot Demonstrate Irreparable Injury

One prong of the legal standard for obtaining a stay poses the question, "Has the petitioner shown that without such relief, it will be irreparably injured?"[6] The Court further stated:

> The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.

---

[5] Specifically, there are currently four rate centers with no blocks remaining (West Angeles, Torrence, Inglewood and Hawthorne); one rate center with 1 block remaining (Malibu); one rate center with 2 blocks (Culver City); and two rate centers with 3 blocks remaining (Lomita and Beverly Hills). Data as of 12/22/05 from Neustar Pool Tracking Report (www.nationalpooling.com/pas/control/pooltrackingreport)

[6] *Virginia Petroleum Jobbers Ass'n*, 259 F.2d 921, 925.

> The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.[7]

Here, Petitioners cannot demonstrate irreparable harm. First, the issue of the dialing pattern in California can be revisited at a later date and conformed to uniform ten-digit dialing for everyone if the CPUC and/or the FCC deems such a change appropriate and in the public interest. Although the CPUC declined to modify the dialing pattern for purposes of the 310/424 overlay, it expressly stated that it was leaving open the possibility of adopting the proposed modification in future overlays – which would very likely entail a re-evaluation of the dialing pattern in the 310/424.[8]

Second, Petitioners assert that they will be required to expend funds in the public education campaign in California, which if their petition is successful, would be a wasted expenditure.[9] However, the public education campaign is a shared industry cost that is apportioned according to the number of thousands blocks each company holds, such that larger carriers pay a larger portion of the cost. Moreover, even if the FCC were to grant Petitioners' stay, Petitioners cannot avoid this cost or preserve the status quo, having already been required to send notices to customers in California this month.[10] For this reason, the ALJ recently denied another last minute

---

[7] *Id.*

[8] *See e.g.,* CPUC, D.05-12-047, *Opinion on Petition for Modification,* pp. 2-3, 13-14, 17.

[9] Petition at 9-10.

[10] *Overlay Decision*, D.05-08-040, issued August 29, 2005, *mimeo*, p. 56, Ordering Paragraph 6.

effort by TCLA to suspend the schedule for the distribution of public notices.[11]

Petitioners also assert that consumers will be harmed by the confusion created if the campaign starts and then is later changed.[12] Notices have already been sent to customers and permissive dialing will begin on December 31, 2005. Any such confusion would, at this juncture, be the result of Petitioners' own efforts and in any event does not constitute irreparable harm necessitating a stay. Delaying the 310/424 overlay now would confuse consumers and should be avoided. Petitioners' stay request should be denied, allowing the overlay plan to go forward, which has now been clearly communicated to customers in California.

B. Issuance Of A Stay Would Substantially Harm Consumers and Other Carriers Operating in California And Is Not In The Public Interest

Another prong regarding whether a stay can be granted is whether other interested parties will be harmed by maintaining the status quo. Petitioners blithely state that a stay would not harm other interested parties. To the contrary, carriers and consumers in the 310 area code would be substantially harmed by further delaying implementation of the 310 overlay. As stated above, the 310 NPA is in dire need of relief with almost no new numbers left to meet consumer demand. Incumbent carriers may not have

---

[11] 11/29/05 ALJ Ruling.

[12] Petition at 10.

enough numbers in their inventories to serve customers until August of 2006. Any new entrants that had hoped to enter the 310 market may be without resources to establish a footprint and offer competitive alternatives to the incumbents. This is substantial harm, not only to competition and carriers, but also to consumers who may be foreclosed from the carrier of their choice or may be unable to get a number for a new line in the 310 area code. This is exactly the harm that the Commission sought to avoid when it stated, "[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources."[13]

The Commission is well aware of the need for area code relief in the 310 area code. In a previous Commission Order in which the FCC granted additional authority to the CPUC to raise the contamination threshold in the 310 and 909 NPAs, the Commission stated, "We emphasize that our action in this order is intended to assist the California Commission as it implements area code relief for the 310 and 909 NPAs, and should not be used to justify delaying this much needed relief."[14] Since that time, more numbers have been utilized by the industry to meet consumer demand and as of this week only 157 individual blocks remain plus the one remaining assignable NXX code.

---

[13] *See* California PUC Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, *Order*, 14 FCC 17486, 17490 (1999) (emphasis added) (the "*Delegated Authority Order*").

[14] *See* Numbering Resource Optimization, *Order*, 18 FCC Rcd. 16860 at ¶ 11 (2003).

Further delay in relieving the 310 NPA is clearly not in the public interest. Such a result would directly conflict with the FCC's stated policies and would adversely impact both carriers and consumers in California. Moreover, the CPUC took great care in deciding whether to grant relief and in what form and took extraordinary steps to include the public and carriers in discussions starting in the late 1990's. Even Petitioner's particular issue here has been carefully and fully considered by the CPUC on several occasions in the past few months.[15]

II. PETITIONERS HAVE NOT DEMONSTRATED THAT THE CPUC VIOLATED FCC NUMBERING RULES AND HAVE SHOWN NO LIKELIHOOD OF SUCCESS ON THE MERITS

Petitioners essentially allege that (1) 1+10 digit dialing violates the FCC's rules and (2) allowing wireless customers to dial 10 digits and wireline customers to dial 1+10 digits is discriminatory.[16] As to the first issue, while the FCC declined to mandate 1+10 dialing coincident with overlays, it did not declare the practice illegal. Several other states have adopted 1+10 dialing as the dialing pattern in their states for overlays.[17]

---

[15] *See note 1, infra,*

[16] Petitioners cite a US Court of Appeals decision in which the Court rejected claims by the NY Commission that the FCC lacked authority to promulgate rule 52.19(c)(ii). Petition at pp. 6-7. This decision is unhelpful to the Petitioners' claim. First, NY was trying to permanently retain 7 digit dialing and did not want to be forced to implement 10 digit dialing. CA has not disputed the FCC's authority nor has it petitioned the FCC to retain 7 digit dialing coincident with the 310/424 overlay.

[17] *See, e.g.*, *Citizens Utility Board Petition to Implement a form of telephone number conservation known as number pooling within the 312, 773, 847, 630 and*

Petitioners attempt to reframe the dialing disparity issue as between 1 + 10 versus 10 digit dialing when, clearly, the issue has consistently been whether 7 or 10 digit dialing is lawful. The rationale behind mandatory 10 (versus 7) digit dialing with overlays was provided by the FCC:

> We are requiring mandatory 10-digit dialing for all local calls in areas served by overlays to ensure that competition will not be deterred in overlay area codes as a result of dialing disparity. Local dialing disparity would occur absent mandatory 10-digit dialing, because all existing telephone users would remain in the old area code and dial 7-digits to call others with numbers in that area code, while new users with the overlay code would have to dial 10-digits to reach any customers in the old code. When a new overlay code is first assigned, there could be nearly 8 million numbers assigned in the old code, with just a few thousand customers using the new overlay code. If most telephone calls would be to customers in the original area code, but only those in the new code must dial ten-digits, there would exist a dialing disparity, which would increase customer confusion. Customers would find it less attractive to switch carriers because competing exchange service providers, most of which will be new entrants to the market, would have to assign their customers numbers in the new overlay area code, which would require those customers to dial 10-digits much more often than the incumbent's customers, and would require people calling the competing exchange service provider's customer to dial 10-digits when they would only have to dial 7-digits for most of their other calls. Requiring 10-digit dialing for all local calls avoids the potentially anti-competitive effect of all-services area code overlays.[18]

---

708 area codes; Illinois Bell Telephone Company Petition for Approval of an NPA Relief Plan for the 847 NPA, Order, Illinois Commerce Commission Docket Nos. 97-0192, 97-0211 (Ill. CC May 11, 1998) (implementing an all-services overlay in Chicago); see, also, NANPA, *Area Codes Requiring 10 Digit Dialing*, at http://www.nanpa.com/nas/public/npasRequiring10DigitReport.do?method=displayNpasRequiring10DigitReport (visited Dec. 15, 2005) (listing two NPAs in Illinois and five in New York requiring 1+10-digit dialing).

[18] Local Competition Order at ¶ 287.

The focus of the FCC's concern was the disparity between dialing the familiar 7 digits and dialing the additional 3 digits of the new area code overlaying an existing area code. To avoid this problem, the Commission merely mandated that everyone dial the full 10 digits coincident with an overlay, regardless of whether their number was held in the old NPA or the new one. It did not prohibit states from going the extra step of requiring 1+10 digit dialing. The FCC has not held that 1+10 vs. 10 digit dialing constitutes illegal discrimination or dialing disparity.

The FCC has acknowledged that states are in the best position to determine dialing patterns because of their familiarity with local circumstances and customs regarding telephone usage.[19] The CPUC is allowing wireless consumers to dial 10 digits instead of the 1+10 in recognition of the fact that wireless networks are designed to allow such calls to be processed, without the additional digit.[20] The additional digit preceding the NPA-NXX-XXXX is meaningless to the wireless network and is an unnecessary requirement for wireless customers. By contrast, some wireline carriers in California strongly supported the 1+10 digit dialing because their wireline networks require the extra digit to properly process the calls.[21] The

---

[19] Local Competition Order at ¶ 317.

[20] CPUC Overlay Decision, D. 05-08-040, pp. 48-49

[21] For example, Verizon California, Inc. and Pacific Bell Telephone Company, California's two largest wireline carriers have repeatedly commented on the impossibility of modifying switches to accept 10 digit dialing in time to implement

CPUC's decision properly acknowledged the different capabilities that exist. Its decision was not discriminatory and was supported by the record. Petitioners' use of FCC precedent dealing with 7 versus 10 digit dialing is not relevant to the question presented here – whether the CPUC actions, given the record before it, are unlawful and discriminatory. Petitioners have not demonstrated a likelihood or probability of success on the merits of this case.

---

the 310 overlay. The CPUC, in response, recently required all interested parties to submit technical comments regarding changes in statewide dialing patterns in California in January 2006. D.05-12-047, *Opinion on Petition for Modification,* p. 13 , but explicitly ruled that such consideration could not delay implementation of the 310 overlay plan.

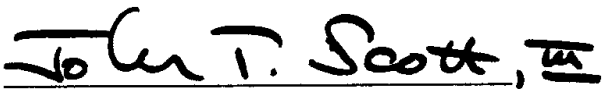
III CONCLUSION

As set forth herein, Petitioners have fought and lost this issue before the CPUC and now turn to the FCC to stop the much needed area code relief in the 310 NPA. Because Petitioners have failed to provide any basis for this last–minute demand to block the CPUC's Order, their petition for emergency relief should be denied.

Respectfully submitted,

VERIZON WIRELESS

By:



John T. Scott, III
Vice President and Deputy General
Counsel – Regulatory Law

Lolita D. Forbes
Senior Attorney Regulatory Matters

Verizon Wireless
1300 I Street, N.W., Suite 400-West
Washington, D.C. 20005
(202) 589-3760

December 23, 2005